



DUBLIN SOLICITORS' BAR ASSOCIATION

SUBMISSION TO LEGAL SERVICES REGULATORY AUTHORITY

June 2018

AS PART OF A PUBLIC CONSULTATION PRIOR TO A REPORT TO THE MINISTER FOR JUSTICE AND EQUALITY ON THE EDUCATION AND TRAINING ARRANGEMENTS IN THE STATE FOR LEGAL PRACTITIONERS

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BACKGROUND

The Dublin Solicitors Bar Association ['DSBA'] which was established in 1935 is the largest independent association of solicitors in Ireland, with a membership of over 3,000 practitioners. Our membership includes solicitors firms of all sizes from the sole practitioner to the largest firms in Ireland.

The DSBA is solely a representative and educational body for solicitors, and does not have any regulatory function in relation to solicitors in Ireland.

The DSBA is the largest independent provider of continuous professional development courses for solicitors in Ireland, averaging three full CPD seminars per month as well as numerous smaller CPD events.

The DSBA operates an annual means-assessed Bursary available to those who wish to qualify and practise as solicitors in the Dublin area. The Bursary aims to assist with the fees and living expenses involved in undertaking the required training courses to become a solicitor. The size of the award will vary depending on individual circumstances, and is aimed at facilitating entry into of the solicitors' profession for those not having the financial means to do so.

The DSBA is thus uniquely placed, and with an independent voice, to provide a perspective on the education and training arrangements in the State for solicitors as legal practitioners.

This Submission to the Legal Services Regulatory Authority ("the Authority") provides a broad commentary on legal education in Ireland as relevant to becoming a solicitor, and in the course of which we touch upon some of the specific aspects set out in section 34 (3) (c) of the Legal Services Regulation Act 2015.

For the purposes of this Submission we have sought the views of our members through the auspices of the DSBA Council and the DSBA Younger Members Committee, and of a number of other parties including an Associate Professor of Law in University College Dublin having a particular interest in (and being published on) the subject of legal education In Ireland.

We have also considered for information purposes the Solicitor Education in Ireland Review Report recently issued by *Ching, Crewe and Maharg* as commissioned by the Law Society of Ireland (January 2018),

At the outset may we express our support for the provision of legal education in Ireland which respects and underpins the professional principles set out in Section 13(5) of the Legal Services Regulation Act 2015.

PRIMARY LEGAL EDUCATION

The DSBA is an advocate of solicitors having a degree in law (or law coupled with other suitable topic such as business), as providing the basic but essential grounding required for entry to professional practice as a solicitor. In that regard we understand that the holding of a primary or secondary degree in law in other EU jurisdictions is typically a pre-condition to entry into of the legal profession in such jurisdictions.

As matters stand however there is no requirement (and thus not much incentive) for students who wish to become solicitors to undertake a primary degree in law, given that the Law Society's Solicitors' Entrance exam (called 'Final Examination Part 1, or 'FE1' for short) is open to all persons whether with

or without a university degree, whether having a law degree or non-law degree and whether or not having undertaken any prior conversion course in the law before sitting that exam.

Accordingly it would in our view be timely that as part of the Authority's education review some consideration should be given to attributing a substantive value to having a university or other primary or secondary degree in law, and what credit(s) might be given to the holders of such a degree, in respect of the FE1 exam. At present the only 'credit' provided is an exemption from holders of any university degree in Ireland (or abroad) from having to sit the Law Society's Solicitors' Preliminary Exam – which has nothing to do with law, and goes only to testing knowledge of English and the Irish Government as well as general knowledge.

If it is viewed as appropriate that the FE1 exam (whether as is or as re-modelled in the future) should remain open to be undertaken by anyone who (having passed or is exempted from the Preliminary Exam) chooses to do so whether or not they have any background in the study of the law, then the DSBA would advocate the introduction of a credit system for holders of a law degree (primary or secondary) or a law conversion degree or diploma from appropriate educational bodies duly certified (in terms of standards and syllabus) for such purposes by the Law Society in relation to the exams to be undertaken for FE1. If no such credit is provided, then in effect one equates a four year law degree course (such as provided in TCD and UCD universities) with a one year law conversion course (in preparation for the FE1 exam) offered by non-university educational bodies.

The 'certification' of the educational bodies concerned should include and thus allow (subject to appropriate standards and syllabi) for credit in the form of exemption of certain law degree modules from corresponding FE1 exam modules where a certain standard has been achieved by the law student concerned in or during his/her law degree.

The DSBA would also advocate greater and more structured co-operation between the solicitors profession (through its representative bodies) and law degree providers (such as through the Heads of Law Schools Networks/Forum) to assist in having law syllabi streamlined rather more towards the practice of law by solicitors. In particular we would advocate the increased adoption of a "*clinical education*" approach by universities to help develop the skills that trainees would require to exhibit as a trainee solicitor (as to which please refer to the paper enclosed titled as: *Legal Education in Ireland: A Paradigm Shift to the Practical (2011)*).

The introduction of a more "*clinical education*" approach may very well in turn increase the attractiveness of undertaking a law degree, particularly from the perspective of the availability of trainee contracts from law firms. In that regard, for example, the recent introduction by UCD Law Faculty of a dedicated legal skills and drafting module across legal topics for all first year law degree students (as a compulsory requirement) may be regarded as a very progressive step in university based clinical education in Ireland.

Another good reason for examining streamlining is to ensure that so far as practicable law school students cover in their degrees the bulk of the syllabus required to sit the FE1 exam.

Our comments above should not be taken to attribute a lesser value to non-law degrees or diplomas, but rather seeking to attribute a more substantive value from the legal education obtained by undertaking a law degree in Ireland.

FINAL EXAMINATION

In order to undertake a traineeship with a solicitor, the first requirement (apart from the Preliminary exam mentioned above) is for the student to sit and pass the FE1 exam set by the Law Society of Ireland. This involves sitting and passing eight basic legal topics as follows:

- Company Law
- Constitutional Law
- Law of Contract

- Criminal Law
- European Union Law
- Equity
- Real Property
- Law of Tort

The FE1 exam takes place twice a year in spring and autumn and at a cost of €105 per examination (€840 in aggregate). The exams can be taken at intervals and thus students typically take a set of four exams at a time (which thus all can be sat in one year if the student so requires).

The syllabus for the FE1 exam is well-structured and practically orientated towards becoming a solicitor. The FE1 exam is a high standard professional orientated test, the quality of which is supported by not being conducted on an 'open book' basis.

We would however suggest that the present review give consideration as to whether in the interests of all concerned, not least the recipients of legal services, one would be better served by the introduction of a mandatory pre FE1 exam requirement as to having undertaken an appropriate study of Irish law with a certified body over a period of at least two years. This may of course be contrasted with the three to four years required to achieve a university law degree, but at least would go some way to ensuring that those who sit the FE1 exam have obtained a good grounding in Irish law across all its aspects.

We would also suggest that the Authority consider as to whether, in the interests of reducing the overall time period required to obtain the requisite legal education to practice as a solicitor, the FE1 exam would be open to being sat by law students in their third or fourth year of study for their degree (thus facilitating, if successful in the FE1 exam, an earlier start to their entry onto the PPC1 course). The present structure where, typically, the FE1 exam is taken in two or more sittings by a student can operate to materially delay the start of such student's training as a solicitor – albeit passing the FE1 exam is of course down to each student.

TRAINING CONTRACT

Having passed the FE1 exam, a person becomes thereby eligible to apply for a place on the Law Society Professional Practice Course 1 ('PPC1').

However as a pre-condition to taking up a place, such person must have secured a training contract with a practicing solicitor of five years or more standing. This requirement can prove to be very difficult for students to meet so early in their career, and can also be very difficult for law firms to be able (apart from exam results) to make an informed determination of the skills and abilities of the person concerned. The requirement to obtain a training contract is a pre-condition, but yet is only required to be commenced within 14 days after completion of the PPC1 course. One might wonder therefore why such a pre-condition exists at least as a mandatory requirement rather than an optional one. It is also the case that once a training contract has been signed up to that the training solicitor becomes liable under employment law to pay the salary of the trainee notwithstanding their non-availability for six months from date of commencement of the PPC1 course.

It may also be noted that the training contract has two legal components to it, namely the indenture of traineeship and an employment contract. It is not the case that the component parts are mutually harmonious as they impose professional obligations and employer obligations respectively. In effect the trainee who holds a training contract can be immune from any form of sanction or removal by the training solicitor for non-performance by the trainee solicitor, notwithstanding what would otherwise be the case under employment law.

We would suggest that the component parts and the obligations that they impose both on solicitors and trainees be considered as part of the education review by the Authority.

Following completion of the PPCI course a person must then commence their training with their contracted solicitor, and for a period of 11 months. The training solicitor is obliged over the course of the traineeship to ensure that the trainee obtains knowledge of certain basic practice areas to include: conveyancing, litigation, probate, and one other to be chosen. In turn, that requires a trainee to be moved regularly within a law firm in order to gain such experience whether or not that law firm provides services in all of the basic areas. This is not necessarily objectionable (as being necessary to ensure an all-round grounding in the law and in the practice of law as a solicitor) but it may very well serve to substantially limit the experience gained by the trainee and of less usefulness to the training solicitor.

Whilst 11 months might appear to be a reasonable period of time, in practice it is generally too short a time period to provide the requisite practice experience that a trainee solicitor needs to obtain; and makes it more difficult for the training solicitor and his/her firm to adequately plan for the provision of the required experience and running of the firm's practice.

PPCI

PPCI is a full time training course that runs from September to March. This full-time course is held out to be practice-oriented, with instruction given mainly by (on a part time basis) practising solicitors and Law Society staff. Students are assessed through continuous assessment and end-of-course examinations.

The following are the subjects covered.

- Foundation
- Course Applied Land Law
- Probate & Tax
- Business Law
- Litigation (Civil & Criminal) Legal Practice Irish (LPI)
- Skills - Civil & Criminal Advocacy, Interviewing & Advising, Legal Research, Legal Presentation
- Skills, Legal Writing & Drafting, Negotiation & Professional Development.

The provision of the PPC1 course is not subject to any published standards or monitoring of standards as to the adequacy or otherwise of the teaching or content of the subjects outlined above. The DSBA would advocate the introduction of monitoring as being essential towards ensuring the delivery to law firms of trainees who have the requisite practice and knowledge based skills to make them immediately useful on commencement of their in-law firm training contract. In circumstances where learning and exams in PPC1 is through open book and online mediums, and (it appears) with limited focus on the actual practice as a solicitor across the spectrum of activities/business, the DSBA would question whether the present PPC1 course delivers for both law firms and students in the manner or to the standard required, at least from a "clinical education" perspective. Learning by rote is no substitute for actual learning.

For example to take one of the basic and essential skills required of a solicitor - being the drafting of a range of documents to include letters, agreements, declarations, notices etc. - it is essential that those drafting skills are embedded and inculcated into students of the PPCI course across each legal topic being studied, and not just as a simple module in its own right (on a one or two day teaching basis). Stronger emphasis is required in the PPC1 module on development of the core skills of drafting, negotiation and advocacy across all modules, as well as instilling in students an acute understanding of ethics and undertakings.

The feedback we received from recently qualified solicitors is that there was insufficient focus in the PPCI module on the practical aspects of being a solicitor - such as advocacy, the Courts system, interviewing clients, letter writing, drafting of deeds, conducting meetings, making presentations, understanding fee income and billing etc.

We would observe that the syllabus of the PPCI course has not been the subject of consultation with training solicitors or generally law firms at large. It is odd that the solicitors and law firms who provide what is described as “the core legal training” of a solicitor have not been consulted at large by the Law Society as provider of the PPCI course, notwithstanding their central role in the process of the legal education of solicitors.

The cost of the PPCI Course at €8,300 (circa €13,000 before income tax) is very onerous for both trainees (if paid by themselves) or law firms (if paid by them). One might expect that sort of cost for a year-long course, not a six month course. For most smaller to medium sized law firms a decision whether to commit to taking on one or more trainees (and thus provide students with the opportunity to train to become a solicitor) is materially influenced by the level of fees for PPCI when coupled with the mandatory salary that must be paid to a trainee undertaking that course. The DSBA would therefore suggest that the cost of PPCI be reviewed as part of the study to evaluate whether such cost acts as an inhibitor to entry into of the solicitor’s profession in Ireland, and if so whether justified.

To provide support for students who do not have the means to discharge the cost of PPC1, one might recommend that any surplus funds arising from operation of the Law Society Education School (to year end 2017, being circa €240,000) be applied as bursary grant funding targeted at poorer students who take up training contracts with small law firms. This may serve to lessen the financial obligation on small firms and in turn encourage more widespread availability of trainee solicitor positions.

PPCII

After eleven months of the in-office training period post PPC1, the trainee returns to the Law School to attend PPCII. PPCII usually begins annually in April and runs for eleven weeks inclusive of examinations. The following are the compulsory subjects covered on the PPCII:

- Professional Practice
- Conduct and Management (PPCM)
- Family & Child Law and Employment Law.

There is also a range of elective choices:

- Advanced Civil Litigation
- Advanced Legal Practice Irish
- Banking Law
- Commercial & Complex Property Transactions
- Commercial Contracts
- Corporate Transactions
- Insolvency
- Medical Law & Litigation
- Non-Adversarial Dispute Resolution
- Technology & Intellectual Property Law Syllabus, time, costs, skills

The PPCII course fees are €4,500 (or circa €6,300 before income tax).

Our observations on PPC1 above apply equally to PPC11.

In addition to our observations above, we would suggest the following:

- 1) That the PPCII course syllabus is structured to deliver in terms of skills and knowledge trainees who should be fully educated in the key practice areas of litigation, probate and in their respective elective subjects, to a standard almost ready to commence practice as a solicitor in their own right.

To give two examples - in property matters one would expect the trainee to have a detailed knowledge of the rules of the Property Registration Authority of Ireland and of all aspects pertaining to a property transaction; in litigation matters one would expect the trainee to have a detailed knowledge of the rules of the superior courts and of all the forms required in that regard in relation to legal proceedings. In both cases one would expect the trainee to have the skill and ability to draft, without much correction required, basic legal documents as well as day to day correspondence.

- 2) That the PPC11 course, in its elective subjects, be divided between (a) topics required by general practitioners and (b) topics required by larger or more specialist firms.

The feedback we received from recently qualified solicitors is that there was insufficient focus in the PPC11 module on the practical aspects of being a solicitor; and that Family Law should be optional not mandatory.

- 3) That the PPCII examination be practice orientated and non-open book so far as practicable.

Having completed PPCII the trainee must return to the office of the training solicitor and complete the outstanding period of time – ten months if the trainee has not gained credit of work done prior to PPCI and six months if credit has been obtained.

PPCI & PPCII

Whilst there may be arguments for and against, the DSBA is of the view that the Authority in its education review consider the possibility of the upfront loading of the professional training requirement in advance of in-office training, and accordingly to having a combination of PPCI & PPCII into a one all-in up to 9 month course - with two modules similar to PPCI /PPCII. It could be proceeded by a two month practice induction training in the office of the training solicitor so as to give the trainee a perspective of what is expected and what is required to be learnt on the training course.

A combined course would have the merit of uninterrupted in-office training over the requisite period and thus be of more use and beneficial to both trainees and law firms alike. It may also be more cost effective for all concerned,

Whatever may be the outcome of the present review, it is essential that structures are put in place to regularly monitor and adapt the modules for the education of trainee solicitors, the subjects on each syllabus, the optional and subject electives for each syllabus, and the way in which subjects are taught – so as to ensure that those modules are responsive to, and deliver upon, the business and practice needs of law firms in Ireland and better prepare trainee solicitors for what they need to know.

Finally, as regards the provision of PPCI & PPC11 courses by the Law Society (only, and not any other provider), we for now hold to the view that the Law Society should remain the sole provider, This is on the assumption that the Law Society becomes subject to appropriate monitored professional legal educational standards which are verified as fit for purpose; and where the structure and content of the courses is consulted upon with the solicitors profession at large on a periodic basis.

CPD

The requirement on a solicitor to maintain a knowledge on a current basis of the law and the practice of law as a solicitor, both general and regulatory - known as Continuous Professional Development - is recognised as essential to the delivery of legal services to a high standard and thus in the public interest.

The CPD requirement each year is determined by the Law Society, but again without any consultation with solicitors or law firms at large. Accordingly practitioners have found themselves subject to year on year increases to the annual requirement of CPD points and consequent increased costs, and without any empirically based justification put forward for such increases.

It is also the case that there are no standards, or monitoring of standards, around the delivery of CPD by either the Law Society or third party providers, when arguably there should be. However it is the

case that the Law Society does act as arbiter as to whether or not a form of study should be recognised as qualifying for CPD points, which provides some measure (albeit limited) of ensuring that the CPD provision is fit for purpose.

RECCOMENDATIONS

Appropriate standards and education and training

1. To attribute greater value/credit to the Law Degree as part of legal education training.
2. To retain the FE1 exam but permit for Law Degree students early sitting and subject credits for Degree/FE1 exam duplication.
3. To consider introduction of a pre FEI Exam requirement (save for specified exceptions) as to having undertaken an appropriate study of Irish law for up to two years with a body certified by the Law Society.
4. To continue with the provision by the Law Society of the PPCI & PPC2 courses, subject to monitored standards and cost evaluations.
5. To consider combining the PPCI & PPCII into one course, and so as to run continuously for six to nine months.
6. To review the training contract make up (in its two component elements) and its suitability to legal education and practice requirements.
7. To make CPD courses subject to appropriate standards and evaluation by the Authority.

Scope and content of the curriculum

8. To encourage closer links between legal education providers and solicitor representative bodies to discuss legal education training with reference to core legal subjects and legal skills.
9. To ensure that the curriculum for PPCI & PPC2 is more practice orientated, and is taught in a manner which provides trainee solicitors with the essential skills and knowledge required for their practice as solicitors.
10. To ensure that the curriculum for PPCI & PPC2 is made subject to periodic consultation with the solicitors' profession, and responsive to the needs of solicitors practices.
11. To divide the elective topics on the PPC11 course into (a) subjects required by general practitioners, and (b) subjects required by larger or specialist firms.

Appropriate standards and adherence to these standards

12. To ensure that emerging trends and needs in legal education and training (e.g. as to legal analytics, legal technologies and legal services online) are considered periodically by the Law Society, and curriculum adjustments made as appropriate to training courses.
13. To ensure that the "open book" approach to examination of knowledge and skills on PPCI & PPC2 does not predominate the method of course examination.